

The Scottish Government

Health Workforce and Performance Directorate
Pay and Terms and Conditions of Service Division



Dear Colleague

**TERMS AND CONDITIONS OF SERVICE:
CONSULTANTS (SCOTLAND) (2004)
SPECIALTY DOCTOR (SCOTLAND) (2008)
ASSOCIATE SPECIALIST (SCOTLAND) (2008)
NHS HOSPITAL MEDICAL AND DENTAL STAFF AND
DOCTORS AND DENTISTS IN PUBLIC HEALTH
MEDICINE AND THE COMMUNITY HEALTH SERVICE
(SCOTLAND)**

Summary

1. This circular advises NHSScotland employers of changes to the terms and conditions of service for consultants; specialty doctors and associate specialists; and staff covered by the NHS Hospital Medical and Dental Staff and Doctors and Dentists in Public Health Medicine and the Community Health Service (Scotland) Terms and Conditions of Service.

Agreement

2. Agreement has been reached to amend all sets of Terms and Conditions of Service as detailed below.

7 June 2013

Addressees

For action

Chief Executives,
Directors of Finance
Directors of Human Resources
NHS Boards, Special Health
Boards, NHS National Services
Scotland (Common Services
Agency) and Healthcare
Improvement Scotland

For information

Members, Scottish Partnership
Forum
Members, Scottish Terms and
Conditions Committee
Members, Scottish Workforce and
Governance Group
Management Steering Group

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Injury Allowance

4. The NHS Staff Council has approved a new section in the NHS Terms and Conditions of Service Handbook (Section 22) which introduces a contractual right to injury allowance which will replace the statutory Injury Benefit provisions. The text of this is attached at Annex A.

5. The new contractual injury allowance arrangements apply to all doctors and dentists employed by NHS Boards, Special Health Boards and NHS National Services Scotland.

6. For doctors and dentists on the terms and conditions covered by this circular, it has been agreed that this will be incorporated into the relevant TCS section on Injury Sustained on Duty. The wording of this section is set out in Annexes B to E. These injury allowance arrangements are effective from 31 March 2013.

Parental Leave and Public Sector Equality Duty

7. To ensure legal compliance with the Equality Act 2010 and Public Sector Duty, the temporary appendices/schedules of each set of TCS have been revised.

8. To ensure legal compliance with the Parental Leave (EU Directive) Regulations 2013, the parental leave provisions are updated.

9. The temporary appendices/schedules in each set of TCS should be read in conjunction with the provisions of the relevant Partnership Information Network (PIN) policies. NHSScotland employers are reminded that the PIN policies define a minimum standard of best employment practice. While local adaptations may be agreed in partnership to suit Boards' own local needs, any such adaptations must still meet or exceed the minimum standards set out within the PIN policies.

Redundancy

10. References to the transitional arrangements in place 1 October 2006 to 30 September 2011 have been deleted.

Agreement - Consultants

11. The following amendment has been agreed to the Consultants (Scotland) 2004 Terms and Conditions of Service.

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Section 11 – Determining the starting salary for doctors taking up locum consultant appointments.

12. It has been agreed that the provisions set out in Section 5, paragraph 1.7 of the Terms and Conditions – Consultants (Scotland) 2004 should also apply to those doctors taking up locum posts, and that a parallel provision should be inserted into Section 11. This arrangement came into effect on 31 March 2013. The text of the amendment can be found in Annex B.

Agreement – Juniors

13. The Joint Negotiating Committee (Juniors) has approved the following amendment.

Pay Protection on Return to Training

14. Paragraph 132 is amended to reflect the changes set out in NHS Pay Circular PCS(DD)2007/9 and to clarify that practitioners whose previous appointment was in the England, Scotland, Wales, Northern Ireland, Isle of Man or Channel Islands hospital service are eligible for protection of salary under the terms of the paragraph. The text of the paragraph can be found in Annex D. Paragraph 135(e) is also amended to reflect the change.

Action

15. NHS Boards, Special Health Boards and NHS National Services Scotland (Common Services Agency) are required to:

- a) note that this NHS Circular, Annexes and Appendices have been approved by Scottish Ministers under Regulations 2 and 3 of the National Health Service (Remuneration and Conditions of Service) (Scotland) Regulations 1991;
- b) ensure that employees' attention is drawn to the changes set out in this circular;
- c) make their own arrangements for obtaining additional copies of this circular which can be viewed at: www.sehd.scot.nhs.uk

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Enquiries

16. Employees should direct their personal enquiries to their employing NHS Board or Special Health Board.

Yours sincerely



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Deputy Director
Directorate for Health Workforce and Performance

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The Scottish Government
Health Workforce and Performance Directorate
Pay and Terms and Conditions of Service Division



**NATIONAL HEALTH SERVICE
APPROVAL OF REMUNERATION AND CONDITIONS OF SERVICE**

Scottish Ministers, in exercise of the powers conferred on them by Regulations 2 and 3 of the National Health Service (Remuneration and Conditions of Service) (Scotland) Regulations 1991 hereby approve the amendments the terms and conditions of service for Consultants (Scotland) (2004), Associate Specialist (Scotland) (2008), Specialty Doctor (Scotland) (2008) and doctors covered by the National Health Service Hospital Medical and Dental Staff and Doctors and Dentists in Public Health Medicine and the Community Health Service as set out in NHS Circular PCS(DD)2013/3 dated 7 June 2013.



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The Scottish Government
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DIRECTION

Scottish Ministers, in exercise of the powers conferred on them by Section 105(7) of, and paragraph 5 of Schedule 1 and paragraph 7 of Schedule 5 to, the National Health Service (Scotland) Act 1978, hereby give to NHS Boards and Special Health Boards and NHS National Services Scotland (Common Services Agency) the following Direction.

The terms and conditions for staff covered by NHS Hospital Medical and Dental Staff and Doctors and Dentists in Public Health Medicine and the Community Health Service (Scotland), Specialty Doctor (Scotland) (2008), Associate Specialist (Scotland) (2008) and Consultants (Scotland) (2004) are amended as set out in the Annexes and Appendices to this Circular.



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NHS Terms and Conditions of Service Handbook

SECTION 22: INJURY ALLOWANCE

22.1 This section contains provision for an injury allowance to be paid to eligible employees (1) who, due to work related injury, illness or other health conditions are on authorised sickness absence or phased return to work with reduced pay or no pay. It also makes provision for the protection of pay in certain circumstances.

22.2 This section should be read in conjunction with Section 14 or Section 14(a) (England) and Annex Z. It does not confer an additional period of sickness absence entitlement to eligible employees.

Eligibility

22.3 Eligible employees who have injuries, diseases or other health conditions that are wholly or mainly attributable to their NHS employment, will be entitled to an injury allowance, subject to the conditions set out in this Section. The injury, disease, or other health condition must have been sustained or contracted in the discharge of the employee's duties of employment or an injury that is not sustained on duty but is connected with or arising from the employee's employment.

22.4 The attribution of injury, illness or other health condition will be determined by the employer who should seek appropriate medical advice (2). In all cases the employer should use the civil burden of proof – "on the balance of probability" (more likely than not) – to determine the outcome. Where the employee disagrees with the employer's decision then they are entitled to appeal the decision through local grievance procedures (see paragraph 22.16).

22.5 Employees claiming injury allowance are required to provide all relevant information, including medical evidence, that is in their possession or that can reasonably be obtained, to enable the employer to determine the claim.

22.6 Payment of injury allowance is not dependent on length of service.

(1) For employees not covered by the NHS Terms and Conditions of Service Handbook or who are no longer working for an NHS employer, the provisions in this Section will apply as specified in individuals' contracts of employment and should be read alongside the relevant contractual documents.

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(2) See the question and answer guidance in Annex A2 or Annex A2(a) England.

22.7 The following circumstances will not qualify for consideration of injury allowance:

- injury whilst on a normal journey travelling to and from work, except where the journey is part of their contractual NHS duties;
- sickness absence as a result of disputes relating to employment matters, conduct or job applications;
- injury, disease or other health condition due to or seriously aggravated by the employee's own negligence or misconduct.

Scale of Injury Allowance

22.8 Injury allowance will be paid to eligible employees as a top up to their sick pay or earnings, when on phased return on reduced pay. This calculation will include any contributory state benefits received by the employee to 85% of pay as defined in paragraph 14.4 and paragraphs 14.4 and 14.5 in Section 14(a) England.

22.9 The injury allowance payment is subject to National Insurance Contributions and income tax but is not subject to pensions contribution deductions.

22.10 Contributory state benefits received for loss of earnings will be offset at the rate at which they are actually received by the employee. All other benefits or payments received should be ignored.

22.11 Eligible employees are required to claim any contributory state benefits they may be entitled to and to declare receipt of such benefit(s) to their employer. Timely notification will ensure that overpayments of injury allowance are not made. Employers will require repayment when an overpayment is made.

Payment Period

22.12 The allowance will be restricted to a period of up to 12 months per episode, subject to local absence management, return to work and rehabilitation policies.

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Using Injury Allowance to Support Return to Work

22.13 Eligible employees who make a phased return to work can receive the injury allowance as a pay top up to 85% of pay as defined in paragraph 14.4, and paragraphs 14.4 and 14.5 in Section 14(a) (England), if their pay is reduced during an employer approved period of rehabilitation, subject to the timescales set out in paragraph 22.12 (See also Annex z for details of phased return arrangements).

Pay Protection

22.14 Eligible employees who have to change jobs permanently to a position on lower pay due to a work related injury, illness and/or other health condition, will receive a period of protected pay that is the same as local provision for pay protection during organisational change.

Recovery of Overpayment of Injury Allowance

22.15 An employer can seek to recover any overpayments made to an employee. Where recovery is necessary, employers should take into account the period of time the overpayment was in place when agreeing the programme of repayments.

Dispute Resolution

22.16 Any disputes that arise due to the local application of injury allowance provisions should be handled via local grievance procedures.

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ANNEX B

**Doctors Employed under Terms and Conditions – Consultants (Scotland)
2004
Injury Sustained on Duty**

Section 7, paragraph 7.5.12 is removed and replaced with the following:

7.5.12 (a) An absence due to injury sustained by a consultant in the actual discharge of his or her duty, for which the consultant was not liable, shall not be recorded for the purposes of these provisions.

7.5.12(b) The Injury Allowance provisions will apply as set out in Section 22 of the NHS Terms and Conditions of Service Handbook.

Determining the starting salary for doctors taking up locum consultant appointments.

The following new paragraph is added to Section 11:

11.1.5 The provisions of paragraph 5.1.7 apply when determining the starting salary for those taking up locum consultant appointments.

Current paragraph 11.1.5 is renamed paragraph 11.1.6

- Temporary Appendix 11 – Maternity Leave and Pay**
- Temporary Appendix 12 – Employment Break Scheme**
- Temporary Appendix 13 – Redundancy Pay**
- Temporary Appendix 14 – Caring for Children and Adults**
- Temporary Appendix 15 – Flexible Working Arrangements**
- Temporary Appendix 16 – Balancing Work and Personal Life**

Agreement has been reached to revise these arrangements in line with statutory changes and they can be found in the temporary appendices/schedules attached at Appendix A.

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ANNEX C

Doctors employed under Terms and Conditions of Service - Specialty Doctor (Scotland) (2008)

Injury Sustained on Duty

Schedule 17, paragraph 28 is removed and replaced with the following:

28. (i) An absence due to injury sustained by a doctor in the actual discharge of his or her duty, for which the doctor was not liable, shall not be recorded for the purposes of these provisions.

(ii) The Injury Allowance provisions will apply as set out in Section 22 of the NHS Terms and Conditions of Service Handbook.

- Temporary Schedule 21 – Maternity Leave and Pay**
- Temporary Schedule 22 – Employment Break Scheme**
- Temporary Schedule 23 – Redundancy Pay**
- Temporary Schedule 24 – Caring for Children and Adults**
- Temporary Schedule 25 – Flexible Working Arrangements**
- Temporary Schedule 26 – Balancing Work and Personal Life**

Agreement has been reached to revise these arrangements in line with statutory changes and they can be found in the temporary appendices/schedules attached at Appendix A.

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Doctors Employed under Terms and Conditions - Associate Specialist (Scotland) (2008)

Injury Sustained on Duty

Schedule 17, paragraph 27 is removed and replaced with the following:

27. (i) An absence due to injury sustained by a doctor in the actual discharge of his or her duty, for which the doctor was not liable, shall not be recorded for the purposes of these provisions.

(ii) The Injury Allowance provisions will apply as set out in Section 22 of the NHS Terms and Conditions of Service Handbook.

Temporary Schedule 22 – Maternity Leave and Pay

Temporary Schedule 23 – Employment Break Scheme

Temporary Schedule 24 – Redundancy Pay

Temporary Schedule 25 – Caring for Children and Adults

Temporary Schedule 26 – Flexible Working Arrangements

Temporary Schedule 27 – Balancing Work and Personal Life

Agreement has been reached to revise these arrangements in line with statutory changes and they can be found in the temporary appendices/schedules attached at Annex A.

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Doctors employed under the NHS Hospital Medical and Dental Staff and Doctors and Dentists in Public Health Medicine and the Community Health Service

Title page

These terms and conditions are renamed as Terms and Conditions of Service – NHS Medical and Dental Staff (Scotland) 2002.

Introduction

The definition of training grade at paragraph xii is updated to include StR(CT).

The definition of “career grade” is inserted into the Introduction as paragraph xiii:

xiii. For the purposes of paragraph 132a and 135e the term “career grade” is a reference to any NHS medical or dental practitioner appointment on national terms and conditions of service other than those in training grades.

Pay Protection on Return to Training

Paragraph 132.a. and 132.b. are replaced with paragraphs 132a, 132b and 132c as outlined here.

132.a. Where a practitioner in a career grade takes an appointment in a training grade which is recognised by the appropriate authority as being for the purpose of obtaining approved training (which may include training to enable the practitioner to follow a career in another specialty) and the practitioner has given continuous service in a career grade post or posts for at least 13 months immediately prior to re-entering training, the practitioner shall, while in the training grade, continue to receive a salary protected on the incremental point or threshold the practitioner had reached in his or her previous career grade appointment. Such a practitioner shall receive the benefit of any general pay awards. On reappointment to a career grade post, the practitioner's starting salary should be assessed as if the period spent in the approved training post had been continuing service in the previous career grade. Where a practitioner re-entering training from a career grade has held a recognised training post (or equivalent service overseas) in the 13 months of contracted employment prior to re-entering training, the intervening period spent in the career grade shall be taken as continuing service in the training grade, and the practitioner will be re-appointed on the appropriate incremental point of the training grade scale.

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Where pay in the earlier training post was already protected under these provisions, such protection shall continue. Practitioners whose previous appointment was in the England, Northern Ireland, Scotland, Wales, Isle of

Man or Channel Islands hospital service are eligible for protection of pay point under the terms of this paragraph.

132b. Where a practitioner moves directly from a higher training grade to a lower grade as determined by the maximum point of the basic pay scale, the practitioner shall, while in the lower grade, continue to be paid on the incremental point the practitioner had reached in his or her previous appointment. Such a practitioner shall receive the benefit of any general pay awards. On reappointment to the higher grade or on appointment to another higher grade, the practitioner's starting salary should be assessed as if the period spent in the approved training post had been continuing service in the previous higher grade.

132.c. On entry to a post under these terms and conditions of service a general practitioner who has been vocationally trained and has 4 years experience as a principal in general practice, or a general practitioner who has at least 8 years post-registration experience including at least 5 years as a principal in general practice, shall have entitlement to protection either of his or her superannuable income in his or her last complete year of practice uprated by the factor determined for the purpose of regulations 71(2)(a) of the National Health Service Superannuation Regulations 1980 (SI 1980 No 362) or at the current rate of the second incremental point on the consultant scale, whichever is the lower.

Paragraph 135(e) – The words “or paragraph 132b” should be added after the words “under paragraph 132a” in the first line. Revised paragraph 135.e. reads:

135.e. A practitioner entitled to protection under paragraph 132a or paragraph 132b shall continue to receive the leave entitlement of his or her previous post and shall receive the appropriate training grade salary plus the supplement or his or her protected salary, whichever is the greater, except that where the salary is protected at a point on the training grade scales the supplement for the new post shall be paid in any case. The appropriate training grade salary shall be determined as the point on the training grade incremental scale previously reached, plus recognition of service in the same or a higher grade subject to the provisions of paragraph 123 and such guidance as may be published from time to time. For career grade practitioners entering a training grade, the basic salary paid in the previous appointment shall also, for protection purposes, not include any payments for an

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additional notional half-day under paragraph 14, additional sessions under paragraph 16, payments for extra/additional Programmed Activities, out of hours or on-call, or a salary supplement, as appropriate, for which the practitioner was contracted in that career grade appointment. The practitioner will, however, be entitled to have total pay in the training post calculated as if the duties contracted for in the training post had been carried out under the relevant terms of the career grade contract held before re-entry to training.

Injury Sustained on Duty

Paragraph 238 is removed and replaced with the following:

238. (i) An absence due to injury sustained by a doctor in the actual discharge of his or her duty, for which the doctor was not liable, shall not be recorded for the purposes of these provisions.

(ii) The Injury Allowance provisions will apply as set out in Section 22 of the NHS Terms and Conditions of Service Handbook.

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**Temporary Appendix VI– Maternity Leave and Pay
Temporary Appendix VII – Employment Break Scheme
Temporary Appendix VIII – Redundancy Pay
Temporary Appendix IX – Caring for Children and Adults
Temporary Appendix X – Flexible Working Arrangements
Temporary Appendix XI – Balancing Work and Personal Life**

Agreement has been reached to revise these arrangements in line with statutory changes and they can be found in the temporary appendices/schedules attached at Annex A.

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TEMPORARY APPENDIX/SCHEDULE

MATERNITY LEAVE AND PAY

Introduction

1. All employees will have the right to take 52 weeks of maternity leave
2. Paragraphs 7 to 54 of this Schedule set out the maternity leave and pay entitlements of NHS employees under the NHS contractual maternity leave scheme.
3. Paragraphs 55 to 59 give information about the position of staff who are not covered by this scheme because they do not have the necessary service or do not intend to return to NHS employment.
4. Paragraphs 60 to 64 define the service that can be counted towards the twelve month continuous service qualification set out in paragraph 7 (i) below and which breaks in service may be disregarded for this purpose.
5. Paragraph 65 explains how to get further information about employees' statutory entitlements.
6. Where locally staff and employer representatives agree arrangements which provide benefits to staff, beyond those provided by this section, those local arrangements will apply.

Eligibility

7. An employee working full-time or part-time will be entitled to paid and unpaid maternity leave under the NHS contractual maternity pay scheme if:
 - (i) she has twelve months continuous service (see paragraphs 60 to 64) with one or more NHS employers at the beginning of the eleventh week before the expected week of childbirth;
 - (ii) she notifies her employer in writing before the end of the 15th week before the expected date of childbirth (or if this is not possible, as soon as is reasonably practicable thereafter):
 - (a) of her intention to take maternity leave;
 - (b) of the date she wishes to start her maternity leave – she can choose when to start her maternity leave – this can usually be any date from the beginning of the 11th week before the baby is born (but see paragraph 8 below);
 - (c) that she intends to return to work with the same or another NHS employer for a minimum period of three months after her maternity leave has ended;
 - (d) and provides a MATB1 form from her midwife or GP giving the expected date of childbirth.

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Changing the Maternity Leave Start Date

8. If the employee subsequently wants to change the date from which she wishes her leave to start she should notify her employer at least 28 days beforehand (or, if this is not possible, as soon as is reasonably practicable beforehand).

Confirming Maternity Leave and Pay

9. Following discussion with the employee, the employer should confirm in writing:

- (i) the employee's paid and unpaid leave entitlements under this agreement (or statutory entitlements if the employee does not qualify under this agreement);
- (ii) unless an earlier return date has been given by the employee, her expected return date based on her 52 weeks paid and unpaid leave entitlement under this agreement; and
- (iii) the length of any period of accrued annual leave which it has been agreed may be taken following the end of the formal maternity leave period (see paragraphs 49 and 50 below);
- (iv) the need for the employee to give at least 28 days notice if she wishes to return to work before the expected return date.

Keeping in Touch

10. Before going on leave, the employer and the employee should also discuss and agree any voluntary arrangements for keeping in touch during the employee's maternity leave including:

- (i) any voluntary arrangements that the employee may find helpful to help her keep in touch with developments at work and, nearer the time of her return, to help facilitate her return to work;
- (ii) keeping the employer in touch with any developments that may affect her intended date of return.

Work During the Maternity Leave Period

Keeping in Touch Days

11. To facilitate the process of Keeping in Touch Days (KIT days) it is important that the employer and employee have early discussion to plan and make arrangements for KIT days before the employee's maternity leave takes place.

12. To enable employees to take up the opportunity to work KIT days employers should consider the scope for reimbursement of reasonable childcare costs or the provision of childcare facilities.

13. KIT days are intended to facilitate a smooth return to work for women returning from maternity leave.

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14. An employee may work for up to a maximum of 10 KIT days without bringing her maternity leave to an end. Any days of work will not extend the maternity leave period.
15. An employee may not work during the two weeks of compulsory maternity leave immediately after the birth of her baby
16. The work can be consecutive or not and can include training or other activities which enable the employee to keep in touch with the workplace.
17. Any such work must be by agreement and neither the employer nor the employee can insist upon it.
18. The employee will be paid at their basic daily rate, for the hours worked less appropriate maternity leave payment for KIT days worked.
19. Working for part of any day will count as one KIT day
20. Any employee who is breastfeeding must be risk assessed and facilities provided in accordance with paragraph 34

Paid Maternity Leave

Amount of Pay

21. Where an employee intends to return to work the amount of contractual maternity pay receivable is as follows:
 - (i) for the first eight weeks of absence, the employee will receive full pay, less any Statutory Maternity Pay or Maternity Allowance (including any dependants' allowances) receivable;
 - (ii) for the next 18 weeks, the employee will receive half of full pay plus any Statutory Maternity Pay or Maternity Allowance (including any dependants' allowances) receivable, providing the total receivable does not exceed full pay.
 - (iii) for the next 13 weeks, the employee will receive any Statutory Maternity Pay or Maternity Allowance that they are entitled to under the statutory scheme
22. By prior agreement with the employer occupational maternity pay may be paid in a different way, for example a combination of full pay and half pay or a fixed amount spread equally over the maternity leave period.

Calculation of Maternity Pay

23. Full pay will be calculated using the average weekly earnings rules used for calculating Statutory Maternity Pay entitlements, subject to the following qualifications:
 - (i) in the event of a pay award or annual increment being implemented before the paid maternity leave period begins, the maternity pay should be calculated as though the pay award or annual increment

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had effect throughout the entire Statutory Maternity Pay calculation period. If such a pay award was agreed retrospectively, the maternity pay should be re-calculated on the same basis;

- (ii) in the event of a pay award or annual increment being implemented during the paid maternity leave period, the maternity pay due from the date of the pay award or annual increment should be increased accordingly. If such a pay award was agreed retrospectively, the maternity pay should be re-calculated on the same basis;
- (iii) in the case of an employee on unpaid sick absence or on sick absence attracting half pay during the whole or part of the period used for calculating average weekly earnings in accordance with the earnings rules for Statutory Maternity Pay purposes, average weekly earnings for the period of sick absence shall be calculated on the basis of notional full sick pay.

Unpaid Contractual Leave

24. Employees are also entitled to take a further 13 weeks as unpaid leave to bring the total of leave to 52 weeks. However, this may be extended by local agreement in exceptional circumstances for example, where employees have sick pre-term babies or multiple births.

Commencement and Duration of Leave

25. An employee may begin her maternity leave at any time between eleven weeks before the expected week of childbirth and the expected week of childbirth provided she gives the required notice.

Sickness Prior to Childbirth

26. If an employee is off work ill, or becomes ill, with a pregnancy related illness during the last four weeks before the expected week of childbirth, maternity leave will normally commence at the beginning of the fourth week before the expected week of childbirth or the beginning of the next week after the employee last worked, whichever is the later. Absence prior to the last four weeks before the expected week of childbirth, supported by a medical statement of incapacity for work, or a self-certificate, shall be treated as sick leave in accordance with normal leave provisions.

27. Odd days of pregnancy related illness during this period may be disregarded if the employee wishes to continue working till the maternity leave start date previously notified to the employer.

Pre-term Birth

28. Where an employee's baby is born alive prematurely the employee will be entitled to the same amount of maternity leave and pay as if her baby was born at full term.

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29. Where an employee's baby is born before the eleventh week before the expected week of childbirth and the employee has worked during the actual week of childbirth, maternity leave will start on the first day of the employee's absence.

30. Where an employee's baby is born before the eleventh week before the expected week of childbirth and the employee has been absent from work on certified sickness absence during the actual week of childbirth, maternity leave will start the day after the day of birth.

31. Where an employee's baby is born before the eleventh week before the expected week of childbirth and the baby is in hospital the employee may spilt her maternity leave entitlement, taking a minimum period of two weeks' leave immediately after childbirth and the rest of her leave following her baby's discharge from hospital.

Still Birth

32. Where an employee's baby is born dead after the 24th week of pregnancy the employee will be entitled to the same amount of maternity leave and pay as if her baby was born alive.

Miscarriage

33. Where an employee has a miscarriage before the 25th week of pregnancy normal sick leave provisions will apply as necessary.

Health and Safety of Employees Pre and Post Birth

34. Where an employee is pregnant, has recently given birth or is breastfeeding, the employer must carry out a risk assessment of her working conditions. If it is found, or a medical practitioner considers, that an employee or her child would be at risk were she to continue with her normal duties the employer should provide suitable alternative work for which the employee will receive her normal rate of pay. Where it is not reasonably practicable to offer suitable alternative work the employee should be suspended on full pay.

35. These provisions also apply to an employee who is breastfeeding if it is found that her normal duties would prevent her from successfully breastfeeding her child.

Return to Work

36. An employee who intends to return to work at the end of her full maternity leave will not be required to give any further notification to the employer, although if she wishes to return early she must give at least 28 days' notice.

37. An employee has the right to return to her job under her original contract and on no less favourable terms and conditions.

Returning on Flexible Working Arrangements

38. If at the end of maternity leave the employee wishes to return to work on different hours the NHS employer has a duty to facilitate this wherever possible,

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with the employee returning to work on different hours in the same job. If this is not possible the employer must provide written, objectively justifiable reasons for this and the employee should return to the same grade and work of a similar nature and status to that which they held prior to their maternity absence.

39. If it is agreed that the employee will return to work on a flexible basis, including changed or reduced hours, for an agreed temporary period this will not affect the employee's right to return to her job under her original contract at the end of the agreed period.

Sickness Following the End of Maternity Leave

40. In the event of illness following the date the employee was due to return to work normal sick leave provisions will apply as necessary.

Failure to Return to Work

41. If an employee who has notified her employer of her intention to return to work for the same or a different NHS employer in accordance with paragraph 7 (ii) (c) above fails to do so within 15 months of the beginning of her maternity leave she will be liable to refund the whole of her maternity pay, less any Statutory Maternity Pay, received. In cases where the employer considers that to enforce this provision would cause undue hardship or distress the employer will have the discretion to waive their rights to recovery.

Miscellaneous Provisions

Fixed – Term Contracts or Training Contracts

42. Employees subject to fixed-term or training contracts which expire after the eleventh week before the expected week of childbirth and who satisfy the conditions in paragraphs 7 (i), 7 (ii) (a), 7 (ii) (b) and 7 (ii) (d) shall have their contracts extended so as to allow them to receive the 52 weeks which includes paid contractual and statutory maternity pay and the remaining 13 weeks of unpaid maternity leave.

43. Absence on maternity leave (paid and unpaid) up to 52 weeks before a further NHS appointment shall not constitute a break in service.

44. If there is no right of return to be exercised because the contract would have ended if pregnancy and childbirth had not occurred the repayment provisions set out in paragraph 41 above will not apply.

45. Employees on fixed-term contracts who do not meet the twelve months continuous service condition set out in paragraph 7 (i) above may still be entitled to Statutory Maternity Pay.

Rotational Training Contracts

46. Where an employee is on a planned rotation of appointments with one or more NHS employers as part of an agreed programme of training, she shall have

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the right to return to work in the same post or in the next planned post irrespective of whether the contract would otherwise have ended if pregnancy and childbirth had not occurred. In such circumstances the employee's contract will be extended to enable the practitioner to complete the agreed programme of training.

Contractual rights

47. During maternity leave (both paid and unpaid) an employee retains all of her contractual rights except remuneration.

Increments

48. Maternity leave, whether paid or unpaid, shall count as service for annual increments and for the purposes of any service qualification period for additional annual leave.

Accrual of Annual Leave

49. Annual leave will continue to accrue during maternity leave, whether paid or unpaid, provided for by this agreement.

50. Where the amount of accrued annual leave would exceed normal carry over provisions, it may be mutually beneficial to both the employer and employee for the employee to take annual leave before and/or after the formal (paid and unpaid) maternity leave period. The amount of annual leave to be taken in this way, or carried over, should be discussed and agreed between the employee and employer. Payment in lieu may be considered as an option where accrual of annual leave exceeds normal carry over provisions.

Pensions

51. Pension rights and contributions shall be dealt with in accordance with the provisions of the NHS Superannuation Regulations.

Antenatal Care

52. Pregnant employees have the right to paid time off for antenatal care. Antenatal care includes relaxation and parent-craft classes as well as appointments for antenatal care.

Post-natal Care and Breastfeeding Mothers

53. Women who have recently given birth should have paid time off for post-natal care e.g. attendance at health clinics.

54. Employers are required to undertake a risk assessment and to provide breastfeeding women with suitable private rest facilities. The Health and Safety Executive Guidance recommends that employers provide:

- a clean, healthy and safe environment for women who are breastfeeding,

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- suitable access to a private room to express and store milk in an appropriate refrigerator.

Employers are reminded that they should consider requests for flexible working arrangements to support breastfeeding women at work

Employees Not Returning to NHS Employment

55. An employee who satisfies the conditions in paragraph 7, except that she does not intend to work with the same or another NHS employer for a minimum period of three months after her maternity leave is ended, will be entitled to pay equivalent to Statutory Maternity Pay, which is paid at 90% of her average weekly earnings for the first six weeks of her maternity leave and to a flat rate sum for the following 33 weeks.

Employees With Less Than Twelve Months Continuous Service

56. If an employee does not satisfy the conditions in paragraph 7 for occupational maternity pay she may be entitled to Statutory Maternity Pay. Statutory Maternity Pay will be paid regardless of whether she satisfies the conditions in paragraph 7.

57. If her earnings are too low for her to qualify for Statutory Maternity Pay, or she does not qualify for another reason, she should be advised to claim Maternity Allowance from her local Job Centre Plus or social security office.

58. All employees will have a right to take 52 weeks of maternity leave whether they return to NHS Employment or not.

59. Paragraph 65 contains further information on statutory maternity entitlements.

Continuous Service

60. For the purposes of calculating whether the employee meets the twelve months continuous service with one or more NHS employers qualification set out in paragraph 7 (i) the following provisions shall apply:

- (i) NHS employers includes health authorities, NHS Boards, NHS Special Health Boards and NHS National Services Scotland, NHS Trusts, Primary Care Trusts and the Northern Ireland Health Service;
- (ii) a break in service of three months or less will be disregarded (though not count as service).

61. The following breaks in service will also be disregarded (though not count as service);

- (i) employment under the terms of an honorary contract;
- (ii) employment as a locum with a general practitioner for a period not exceeding twelve months;
- (iii) a period of up to twelve months spent abroad as part of a definite programme of postgraduate training on the advice of the

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Postgraduate Dean or College or Faculty Advisor in the speciality concerned;

- (iv) a period of voluntary service overseas with a recognised international relief organisation for a period of twelve months which may exceptionally be extended for twelve months at the discretion of the employer which recruits the employee on her return;
- (v) absence on a employment break scheme in accordance with the provisions of Schedule 25;
- (vi) absence on maternity leave (paid or unpaid) as provided for under this agreement.

62. Employers may at their discretion extend the period specified in paragraphs 60 (ii) and 61.

63. Employment as a trainee with a General Medical Practitioner shall similarly be disregarded and count as service.

64. Employers have the discretion to count other previous NHS service or service with other employers.

Information about Statutory Maternity/Adoption and Paternity Maternity Leave and Pay

65. There are occasions when employees are entitled to other statutory benefits/allowances and information about all statutory maternity/adoption and paternity rights can be found using the following links:

<http://www.dti.gov.uk/employment/workandfamilies/maternity-leave-pay/guidance/page21116.html>

http://www.dwp.gov.uk/lifeevent/benefits/statutory_maternity_pay.asp

http://jobcentreplus.gov.uk/JCP/Customers/WorkingAgeBenefits/Dev_008115.xml.html

Information about Health and Safety for new and expectant mothers at work can be found using the following link:-

www.hse.gov.uk

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TEMPORARY APPENDIX/SCHEDULE

EMPLOYMENT BREAK SCHEME

General

1. NHS employers should provide all staff with access to an employment break scheme.
2. The scheme should be agreed between employers and local staff representatives.
3. The scheme should be viewed with others, particularly those relating to flexible working, balancing work and personal life, and provisions for carers, as part of the commitment to arrangements which enable employees to balance paid work with their other commitments and responsibilities.
4. The scheme should also enable employers to attract and retain the experience of staff, consistent with the NHS commitment to the provision of high quality healthcare.
5. The scheme should provide for people to take a longer period away from work than that provided for by the parental leave and other leave arrangements.

Scope

6. The scheme should explicitly cover the main reasons for which employment breaks can be used, including childcare, eldercare, care for another dependant, training, study leave or work abroad. It should also indicate that other reasons will be considered on their merits.
7. People on employment breaks will not normally be allowed to take up paid employment with another employer except where, for example, work overseas or charitable work could broaden experience. In such circumstances written authority from the employer would be necessary.

Eligibility

8. The employment break scheme should normally be open to all employees who have a minimum of twelve months' service.
9. Applications should be submitted in writing and notice periods should be clearly stated in an agreement between the employee and employer.

Length of Break

10. The maximum length of break should be five years.
11. Breaks should be able to be taken either as a single period or as more than one period.
12. The minimum length of break should be three months.

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13. The length of any break should balance the needs of the applicant with the needs of the service.

14. The scheme should have provision for breaks to be extended with appropriate notice, or for early return from breaks.

15. All breaks should be subject to an agreement between the employer and applicant before the break begins. The agreement should cover:

- the effect of the break on various entitlements related to length of service;
- a guarantee that, if the applicant returns to work within one year, the same job will be available, as far as is reasonably practicable;
- if the break is longer than one year, the applicant may return to as similar a job as possible;
- return to work at the equivalent salary level, reflecting increases awarded during the break;
- the notice period required before the return to work should be two months if the break is less than a year and six months if the break is more than a year;
- arrangements for keeping in touch during the break;
- requirements on the applicant to keep up to date with their relevant professional registration needs, including attendance at specified training courses and conferences, and any assistance the employer may give in the support of this;
- training arrangements for re-induction to work;
- any other conditions required either by the employer or the applicant;
- NHS pension arrangements during the break. Further information for Scheme members in England and Wales can be obtained from the NHS Pensions website at www.nhsbsa.nhs.uk/Pensions. Members in Northern Ireland should refer to the HSC Pension Service website www.hscpensions.hscni.net. Members in Scotland should refer to the Scottish Public Pensions Agency circular 2009/13, which can be found on their website www.sppa.gov.uk/nhs/circulars2009.

Return to Work

16. Applicants should not have to resign to take an employment break, although there will be a change to the contract of employment.

17. The period of the break should count toward continuous employment for statutory purposes.

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18. Other provisions depending upon length of service, i.e. contractual redundancy payments, leave entitlements etc, should be suspended for the period of the break.

Appeals

19. Applicants should be entitled to a written reason for the refusal of any application.

20. Applicants may resort to the grievance procedure if a request for a break is refused.

Monitoring and Review

21. All records of applications and decisions should be kept for a minimum of twelve months.

22. The operation of the scheme should be monitored annually by employers in partnership with local staff representatives. This will include consideration of diversity data.

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TEMPORARY APPENDIX/SCHEDULE

REDUNDANCY PAY

1. This section sets out the arrangements for redundancy pay for employees dismissed by reason of redundancy who, at the date of termination of their contract, have at least 104 weeks of continuous full-time or part-time service. These take effect from 1 October 2006. It also sets out the arrangements for early retirement on grounds of redundancy and in the interests of the service for those who are members of the NHS pension scheme and have at least two years continuous full time or part time service and two years qualifying membership in the NHS pension scheme. Pension changes take effect from 1 December 2006.

Definition of Redundancy

2. The Employment Rights Act 1996 Section 139 states that redundancy arises when employees are dismissed in the following circumstances:

- "where the employer has ceased, or intends to cease, to carry on the business for the purposes of which the employee was employed; or where the employer has ceased, or intends to cease, to carry on the business in the place where the employee was so employed; or
- where the requirements of the business for employees to carry out work of a particular kind, in the place where they were so employed, have ceased or diminished or are expected to cease or diminish".

Qualification for a Redundancy Payment

3. To qualify for a redundancy payment, the member of staff must be an employee, working under a contract of employment for an NHS employer 'NHS employer' means NHS Boards, Special Health Boards, NHS National Services Scotland, and any predecessor or successor body. Non executive directors of NHS organisations do not qualify. Contracts of employment may be written or verbal, and can be for a fixed period or be continuous. In law, employees have a contract as soon as they start work and in accepting and undertaking the work required they accept the terms and conditions offered by the employer. To qualify for a redundancy payment the employee must also have at least 104 weeks of continuous full time or part time service.

Definition of Continuous Service

4. "Continuous service" means full-time or part-time employment with the present or any previous NHS Employer. If with more than one NHS employer, there must not have been a break of more than a week (measured Sunday to Saturday) between employments.

Definition of Reckonable Service

5. "Reckonable service" for the purposes of an NHS redundancy payment, which is calculated on the basis of the service up to the date of termination of the

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contract, means continuous full-time or part-time employment with the present or any previous NHS employer but with the following additions:

- where there has been a break in service of 12 months or less the period of employment prior to the break will count as reckonable service;
- periods of employment as a trainee with a general medical practitioner will count as reckonable service;
- at employer discretion, any period or periods of employment with employers outside the NHS where these are judged to be relevant to NHS employment can be included in reckonable service.

6. The following employment will not count as reckonable service:

- employment that has been taken into account for the purposes of a previous redundancy, or loss of office payment by an NHS employer;
- where the employee has previously been given pension benefits, any employment that has been taken into account for the purposes of those pension benefits.

Definition of a Months Pay

7. "Months pay" means whichever is the more beneficial of the following calculations:

- 4.35 times a week's pay calculated in accordance with the provisions of Section 221 to 229 of the Employment Rights Act 1996;
- an amount equal to 1/12th of the annual salary in payment at the date of termination of employment.

Calculation of Redundancy Payment

8. The redundancy payment will take the form of a lump sum, dependent on the employee's reckonable service at the date of termination of employment. The lump sum will be calculated on the basis of one month's pay for each complete year of reckonable service subject to a minimum of two years (104 weeks) continuous service and a maximum of 24 year's reckonable service being counted.

9. Fractions of a year of reckonable service will not be taken into account.

Early Retirement on Grounds of Redundancy for Employees entitled to pension benefits

Qualification Criteria

10. Members of the NHS Pension Scheme who are made redundant and meet the conditions set out above in paragraphs 3 to 6, may choose to retire early without reduction in the value of pension benefits as an alternative to receiving the full lump sum benefit set out in paragraph 8. To qualify for early retirement the member of staff must:

- Be a member of the NHS Pension Scheme;

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- Have at least two years' continuous service and two years' qualifying membership;
- Have reached the minimum pension age. The Finance Act 2004 allows for protection of a minimum pension age of 50 for members who had the right to take reduced benefits at that age on 5 April 2006. This protection may continue as long as members retiring early after 6 April 2010 take all their benefits payable under scheme rules. In the NHS Scheme, for those without this protection, members who first joined and some who returned to the scheme after 6 April 2006, minimum pension age will change from 50 to 55 from 6 April 2010.*

Definition of Qualifying Membership

11. 'Qualifying membership' is membership that counts towards entitlement for benefits. Pensionable membership is membership that counts when benefits are calculated. This may be different from reckonable service for the purposes of a redundancy payment as it can include pensionable service from previous periods of employment with the NHS or another employer and periods of part time working.

Use of Redundancy Payment to pay for Early Retirement

12. If the redundant member of staff chooses to take early retirement with an unreduced pension under these arrangements, they will receive immediately the full value of their qualifying pension benefits at the point of redundancy without the actuarial reduction that would occur with voluntary early retirement. Their employer will pay the relevant NHS pension scheme a sum equivalent to the capitalised cost of paying the pension and lump sum early; either as one payment or in five instalments.¹

13. This sum will be paid from the lump sum redundancy payment that otherwise would have been paid to the employee. If the cost to the employer of paying by single payment for early retirement is less than the value of the redundancy payment that the member would have received under paragraph 8 then the redundant employee will also receive from the employer a redundancy payment equivalent to the difference between the two sums. The cost to the employer would therefore normally be the same as if the employee had chosen to take a redundancy payment without unreduced early retirement. However, if the cost of early retirement is more than the redundancy payment due, the employer will pay the additional cost. If the employer chooses to pay in five instalments, the employer is responsible for the additional interest charge.

Treatment of Concurrent Pensionable Employment

* Subject to consultation, for those who are in the new pension scheme (with a normal pension age of 65), minimum pension age will be 55 from when the scheme is set up

¹ It is open to qualifying members to take early retirement under the normal scheme arrangements for voluntary early retirement or normal age retirement.

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14. Where there is concurrent pensionable employment, members may choose between:

- Ceasing all pensionable employment and taking early retirement on the terms set out below in respect of each employment in which case they cannot be pensionable again in the current scheme (normal pension age of 60). (An employment may continue if it is not more than 16 hours a week, without affecting the payment of enhanced benefits, but it will not be pensionable in the scheme) and:
- Taking benefits only in respect of the employment that is being terminated, in which case they can continue being pensionable in other employments. After 6 April 2010, this will not apply if taking benefits under the age of 55.

15. Members with concurrent practitioner and non-practitioner employments, who choose to cease all pensionable employments, will receive only their non-practitioner benefits on redundancy grounds. Where appropriate, benefits for practitioner membership may be taken on an early retirement basis with an actuarial reduction or preserved payment at age 60. (2) (3)

16. The employer who authorises early retirement will be responsible for the pension costs accruing from other terminating employment. If a member returns to work after taking their pension, their pension will be abated, if the combined value of their pension and salary is greater than they earned prior to retirement. This will continue until they reach their normal pension age.

Exclusion from eligibility

17. Employees shall not be entitled to redundancy payments or early retirement on grounds of redundancy if:

- they are dismissed for reasons of misconduct, with or without notice; or
- at the date of the termination of the contract have obtained without a break, or with a break not exceeding four weeks, suitable alternative employment with the same or another NHS employer; or
- unreasonably refuse to accept or apply for suitable alternative employment with the same or another NHS employer; or
- leave their employment before expiry of notice, except if they are being released early (see paragraphs 20 to 21 below); or
- are offered a renewal of contract (with the substitution of the new employer for the previous NHS one);
- where their employment is transferred to another public service employer who is not an NHS employer.

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Suitable alternative employment

18. Employers have a responsibility before making a member of staff redundant or agreeing early retirement on grounds of redundancy to seek suitable alternative employment for that person, either in their own organisation or through arrangements with another NHS employer. Employers should avoid the loss of staff through redundancy wherever possible to retain valuable skills and experience where appropriate within the local health economy.

19. 'Suitable alternative employment', for the purposes of paragraph 17, should be determined by reference to Sections 138 and 141 of the Employment Rights Act 1996. In considering whether a post is suitable alternative employment, regard should be had to the personal circumstances of the employee. Employees will, however, be expected to show some flexibility.

20. For the purposes of this scheme any suitable alternative employment must be brought to the employee's notice in writing or by electronic means agreed with the employee before the date of termination of contract and with reasonable time for the employee to consider it. The employment should be available not later than four weeks from that date. Where this is done, but the employee fails to make any necessary application, the employee shall be deemed to have refused suitable alternative employment. Where an employee accepts suitable alternative employment the 'trial period' provisions in Section 138 (3) of the Employment Rights Act 1996 will apply.

Early release of redundant employees

21. Employees who have been notified of the termination of their employment on grounds of redundancy, and for whom no suitable alternative employment in the NHS is available, may, during the period of notice, obtain other employment outside the NHS.

22. If they wish to take this up before the period of notice of redundancy expires the employer will, unless there are compelling reasons to the contrary, release such employees at their request on a mutually agreeable date. That date will become the revised date of redundancy for the purpose of calculating any entitlement to a redundancy payment under this agreement.

Claim for redundancy payment

23. Claims for redundancy payment or retirement on grounds of redundancy must be submitted within six months of date of termination of employment. Before payment is made the employee will certify that:

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- they had not obtained, been offered or unreasonably refused to apply for or accept suitable alternative Health Service employment within four weeks of the termination date;
- they understand that payment is made only on this condition and undertake to refund it if this condition is not satisfied.

Retrospective Pay Awards

24. If a retrospective pay award is notified after the date of termination of employment then the redundancy payment and/or pension will be recalculated, and any arrears due paid.

Disputes

25. An employee who disagrees with the employer's calculation of the amount of redundancy payment or the rejection of a claim for redundancy payment should make representations to the employer via local grievance procedures. See also paragraph 22 about making a claim for a redundancy payment.

Early Retirement in the Interests of the Efficiency of the Service

26. Members of the NHS Pension Scheme will receive payment of benefits without reduction if they retire early in the interests of the efficiency of the service, and they satisfy the qualifying conditions set out in paragraph 10. Retiring early in the interests of the service is a flexibility available at employer discretion. In these cases, no redundancy payment is due. In agreeing to retirement in the interests of the service, the employer undertakes to pay the costs of paying the pension and lump sum early. Employers will need to ensure that they exercise this discretion appropriately and will be conscious of the implications of any potential discrimination on grounds of age, gender, gender identity or gender expression, pregnancy or maternity, marriage or civil partnership, race, religion or belief, disability, or sexual orientation.

27. These arrangements are aimed at employees who have given valuable NHS service in the past but are no longer capable of doing so. This might be because of new or expanded duties or a decline in the ability to perform existing duties efficiently but not so as to qualify them for ill health retirement. Employers would be expected to consider alternatives before agreeing to early retirement, including reasonable adjustments to an existing role or potential suitable alternatives.

28. The relevant NHS pension scheme certifies the grounds on which early retirement is taking place. The scheme does so on the basis of the information provided by the employer. In each case, therefore, an appropriate senior manager should authorise the early retirement, ensuring that the relevant criteria have been met.

Employer Responsibilities

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29. Employer contributions to the NHS pension scheme do not cover the costs of early retirement benefits. There is a requirement for NHS employers to pay these costs if they retire staff early on grounds of redundancy or in the interests of the service.

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TEMPORARY APPENDIX/SCHEDULE

CARING FOR CHILDREN AND ADULTS

General

1. All NHS employers must have a carer's policy to address the needs of people with caring responsibilities and to meet the requirements of the "right to request" flexible working legislation for carers of children and dependant adults (see Employment Relations Act for definition of "carer"). This policy should emphasise the benefits of employment breaks, flexible working arrangements and balancing work and personal life as set out in the Maternity Leave and Pay, Flexible Working Arrangements and Balancing Work and Personal Life temporary appendices/schedules.

2. The policy should seek to balance the requirements of delivering a first class service with the needs of employees, to find the most effective means of supporting those with carer responsibilities as part of a wider commitment by the NHS to improve the quality of working life.

3. Many of the policies related to child and dependant care will have relevance to other forms of care. For example, the planning process for checking out what would help eligibility criteria and ensuring equality of access. These should be considered when drawing up a carers policy

Child and Dependant Care

4. Childcare covers a range of care choices for children from birth up to age 14 years.

5. Dependant care covers a range of options to meet the needs of dependant adults including the needs of dependant young people over the age of 14, where an employee is involved in substantial and regular care sufficient for them to seek a change in their permanent contract of employment

6. The policy should be drawn up jointly between employers and local staff side representatives. This should cover:

- the child and dependant care needs of people relative to matters such as place of work, working patterns (including shift patterns) and hours worked;
- policy on child and dependant care support particularly related to specific difficulties in recruiting and retaining people in certain job categories;
- equality of access to child and dependant care and affordability, respecting the diversity of personal domestic circumstances;
- guidelines on eligibility;
- how the policy relates to other Appendices, in particular those covering leave and flexible working arrangements;

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- the range of options open to carers, i.e. crèche facilities, childminders, workplace nurseries, allowances, school and holiday play schemes, term-time contracts etc. The policy should be clear as to why certain options are available;
 - partnership options with other employers and trade unions;
 - allocation of senior management responsibility for the operation and monitoring of the policy
7. Where a decision is taken not to offer particular forms of support, the policy should indicate where other arrangements are available to help people with caring responsibilities, and what alternative ways of working exist.
8. Applications and outcomes should be monitored annually, in partnership with local staff representatives.
9. Monitoring information should be analysed and used to review and revise policies and procedures to ensure their continuing effectiveness.
10. Applications and outcomes, from both employer and employees should be recorded and kept for a minimum of one year.

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TEMPORARY APPENDIX/SCHEDULE

FLEXIBLE WORKING ARRANGEMENTS

General

1. NHS employers in partnership with staff organisations will develop positive flexible working arrangements which allow people to balance work responsibilities with other aspects of their lives.

2. Employers are required to consider flexible working options as part of their duty to make reasonable adjustments for disabled staff, staff with dependants and job applications under the Equality Act, and staff who are returning from maternity leave (see Maternity Leave and Pay temporary appendix/schedule).

3. New working arrangements should only be introduced by mutual agreement, whether sought by the employee or the employer.

4. Flexible working should be part of an integrated approach to the organisation of work and the healthy work/life balance of staff.

5. Policies for flexible working should be made clear to all employees.

6. Employers should develop policies on flexible working which, as far as is practicable, should include:

- part-time working, where a person works to a pattern and number of hours by mutual agreement;
- job sharing, where two or more people share the responsibilities of one or more full-time job(s), dividing the hours, duties and pay between them;
- flexi-time, where employees can choose their own start and finish time around fixed core hours;
- annual hours contracts, where people work a specific number of hours each year, with the hours being unevenly distributed throughout the year;
- flexible rostering, using periods of work of differing lengths within an agreed overall period;
- term-time working, where people work during the school term but not during school holidays;
- school-time contracts;
- teleworking, where people work from home for all or part of their hours with a computer or telecommunication link to their organisation;
- voluntary reduced working time, where people work reduced hours by agreement at a reduced salary;
- fixed work patterns, where, by agreement, days off can be irregular to enable, for example, access by separated parents to their children and flexible rostering.

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- Flexible retirement

7. Flexible working arrangements should be available to all employees.

8. All jobs should be considered for flexible working. If this is not possible the employer must provide written, objectively justifiable reasons for this and give a clear, demonstrable operational reason why this is not practicable.

9. There should be a clear procedure for application for flexible working, agreed by employers and local staff representatives.

10. All people with flexible working arrangements should have access to standard terms and conditions of employment, on an equal or pro-rata basis, unless different treatment can be justified for operational reasons.

Monitoring and Review

11. Applications and outcomes should be monitored annually, in partnership with local staff representatives.

12. Monitoring information should be analysed and used to review and revise policies and procedures to ensure their continuing effectiveness.

13. Applications and outcomes, from both employer and employees, should be recorded and kept for a minimum of one year.

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TEMPORARY APPENDIX

BALANCING WORK AND PERSONAL LIFE

GENERAL

1. NHS employers should provide employees with access to leave arrangements which support them in balancing their work responsibilities with their personal commitments.
2. Leave arrangements should be part of an integrated policy of efficient and employee friendly employment practices, and this Schedule should be seen as operating in conjunction with other provisions particularly the Employment Break Scheme, Flexible Working Arrangements and the Caring for Children and Adults Appendices.
3. Arrangements should be agreed between employers and local staff representatives.
4. A dependant is someone who is married to, is a civil partner, or a partner (whether opposite or same sex), "a near relative" or someone who lives at the same address as the employee. A relative for this purpose includes: parents, parents-in-law, adult children, adopted adult children, siblings (including those who are in-laws), uncles, aunts, grandparents and step relatives or is someone who relies on the employee in a particular emergency.

FORMS OF LEAVE

Parental Leave

5. This should be a separate provision from either maternity or maternity support leave and should provide a non-transferable individual right to at least 18 weeks' leave. Leave is normally unpaid, but may be paid by local agreement.
6. Parental leave should be applicable to any employee in the NHS who has nominated caring responsibility for a child under age 14 (18 in cases of adoption or disabled children).
7. Leave arrangements need to be as flexible as possible, so that the leave may be taken in a variety of ways by local agreement. Parental leave can be added to periods of maternity support or maternity leave.
8. Notice periods should not be unnecessarily lengthy and should reflect the period of leave required. Employers should only postpone leave in exceptional circumstances and give written reasons. Employees may also postpone or cancel leave that has been booked with local agreement.
9. During parental leave the employee retains all of his or her contractual rights, except remuneration and should return to the same job after it. Pension rights and contributions shall be dealt with in accordance with NHS Superannuation Regulations. Periods of parental leave should be regarded as continuous service.
10. It is good practice for employers to maintain contact (within agreed protocols) with employees while they are on parental leave.

Maternity Support (Paternity) Leave and Pay and Ante-Natal Leave

11. This will apply to the father of the child (including adoptive fathers), the mother's husband or partner (whether opposite or same sex), or nominated carer.
12. NHS organisations have scope for agreeing locally more favourable arrangements where they consider it necessary, or further periods of unpaid leave.

Maternity support (paternity) leave

13. All employees are entitled to two weeks' of ordinary maternity support (paternity) leave which can be taken around the time of the birth or the placement of the child for adoption.
14. In addition, employees may be entitled to take up to twenty six weeks of additional maternity support (paternity) leave if their partner has returned to work, the leave can be taken between 20 weeks and one year after the child is born or placed for adoption.
15. To qualify for additional maternity support (paternity) leave the employee and their partner must first meet certain qualification criteria. Details of the qualifying conditions and the notification requirements can be found at <http://www.direct.gov.uk/en/employment/index.htm>

Occupational pay during maternity support (paternity) leave

16. There will be an entitlement to two weeks' occupational ordinary maternity support (paternity) pay. Full pay will be calculated on the basis of the average weekly earnings rules used for calculating occupational maternity pay entitlements. The employee will receive full pay less any statutory paternity pay receivable. Only one period of occupational maternity support (paternity) pay is ordinarily available when there is a multiple birth.
17. Eligibility for the two weeks of occupational maternity support (paternity) pay will be 12 months' continuous service with one or more NHS employer at the beginning of the week in which the baby is due.
18. Employees who are not eligible for the two weeks of occupational maternity support (paternity) pay may still be entitled to statutory paternity pay subject to meeting the qualifying conditions. Details of the qualifying conditions can be found at <http://www.direct.gov.uk/en/employment/index.htm>

Statutory pay during maternity support (paternity) leave

19. To qualify for statutory pay in the additional maternity support (paternity) leave period, the employee and their partner must first meet certain

qualifying conditions. Details of the criteria and the notification requirements can be found at <http://www.direct.gov.uk/en/employment/index.htm>

Rights during additional maternity support (paternity) leave

20. Employees who are entitled to additional maternity support (paternity) leave/pay will be entitled to take up to 10 keeping in touch days during the course of the additional maternity support (paternity) leave period. The criteria for keeping in touch days is set out in the Maternity Leave and Pay temporary appendix/schedule.

21. Employees who have taken additional maternity support (paternity) leave will have the right to return to the same job under their original contract and on no less favourable terms and conditions.

Ante-natal leave

22. Reasonable paid time off to attend ante-natal classes will also be given.

Adoption Leave and Pay

23. All employees are entitled to take 52 weeks adoption leave.

24. There will be entitlement to paid occupational adoption leave for employees wishing to adopt a child who is newly placed for adoption.

25. It will be available to people wishing to adopt a child who has primary carer responsibilities for that child.

26. Where the child is below the age of 18 adoption leave and pay will be in line with the maternity leave and pay provisions as set out in this agreement.

27. Eligibility for occupational adoption pay will be twelve months' continuous NHS service ending with the week in which they are notified of being matched with the child for adoption. This will cover the circumstances where employees are newly matched with the child by an adoption agency.

28. If there is an established relationship with the child, such as fostering prior to the adoption, or when a step-parent is adopting a partner's children there is scope for local arrangements on the amount of leave and pay in addition to time off for official meetings.

29. If the same employer employs both parents the period of leave and pay may be shared. One parent should be identified as the primary carer

and be entitled to the majority of the leave. The partner of the primary carer is entitled to occupational paternity leave and pay.

30. Reasonable time off to attend official meetings in the adoption process should also be given.

31. Employees who are not eligible for occupational adoption pay, may still be entitled to Statutory Adoption Pay (SAP) subject to the qualifying conditions. The rate of SAP is the same as for Statutory Maternity Pay.

Keeping in Touch

Work during the Adoption Leave Period

Keeping in Touch Days

32. Employees will be entitled to Keep in Touch Days (KIT) in line with the maternity leave and pay provisions as set out in the Maternity Leave and Pay temporary appendix/schedule.

Leave/Time Off for Domestic Reasons

33. This form of leave should cover a range of needs, from genuine domestic emergencies through to bereavement.

34. These provisions should cover all employees.

35. Payment may be made by local agreement, but the expectation is that relatively short periods of leave for emergencies will be paid.

36. If the need for time off continues, other options may be considered, such as a career break.

37. Applicants for the above forms of leave should be entitled to a written explanation if the application is declined.

38. Appeals against decisions to decline an application for leave should be made through the Grievance Procedure.

Monitoring and Review

39. All applications and outcomes should be recorded, and each leave provision should be annually reviewed by employers in partnership with local staff representatives

40. Applications and outcomes should be monitored annually, in partnership with local staff representatives.

41. Monitoring information should be analysed and used to review and revise policies and procedures to ensure their continuing effectiveness

42. Applications and outcomes, from both employer and employees should be recorded and kept for a minimum of one year.

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